

SUBJECT: FINANCIAL ASSISTANCE PRE-AWARD STAFF REVIEW PROCEDURES

1. Purpose: To revise preaward staff review procedures in its entirety while also removing review procedures for acquisition actions.
2. Effective Date: Upon issuance.
3. Applicability: This procedure applies to all CH financial assistance awarding activities. Where available, local staff representatives should be used by off-site offices.
4. Supersedes: Policy & Procedure (P&P) 04.8D and FAH-11A, dated May 15, 2003.
5. Policy: ACQ staff and other CH contracting activities are responsible for coordinating required pre-award reviews when preparing financial assistance actions.
6. Procedure: Pre-award staff reviews shall be obtained for the following actions:
 - A. Actions required to be reviewed by the Office of Chief Counsel (OCC) – General Law Division (GL):
 - (1) All financial assistance actions, including Funding Opportunity Announcements, awards, amendments, Justifications for Restricted Eligibility (JREs), and Determinations for Noncompetitive Financial Assistance (DNFAs) except for:
 - (a) Financial assistance actions for which approved CH formats are used without deviation;
 - (b) Financial assistance actions awarded in response to a financial assistance Funding Opportunity Announcement that was previously reviewed and approved by OCC-GL, and the actions incorporate, without deviation, the standardized terms and conditions identical to those found on the DOE Professionals Home Page website;
 - (c) Unilateral funding actions which are accomplished on approved CH formats without deviation;
 - (d) No-fund extensions of 12 months or less which are accomplished prior to the term end date on approved CH formats without deviation;

- (e) No-fund extensions exceeding 12 months which are accomplished prior to the term end date on approved CH formats without deviation where, after coordination with OCC-GL, it is determined that updated terms and conditions are not required; and
- (f) JREs and DNFA's for awards of \$1,000,000 or less.
- (2) Requests for OCC-GL pre-award review shall be transmitted on Local Staffing/Review Form, Form AA-56. At a minimum, documentation of proposed actions for OCC-GL pre-award review shall include:
 - (a) A copy of the certified procurement request (PR).
 - (b) PR attachments, including, as applicable:
 - i. Statement of Work, technical proposal, or application.
 - ii. Approved JRE or DNFA, as applicable.
 - iii. Reporting Requirements.
 - (c) Financial Assistance Negotiation Memorandum, Form AA-16, with attachments.
 - (d) One copy of the proposed Funding Opportunity Announcement or award document, together with all appendices and attachments.

B. Actions required to be reviewed by Office of Chief Counsel – Intellectual Property Law (OCC-IPL):

- (1) All financial assistance actions, including Funding Opportunity Announcements, except for the following:
 - (a) Research, development or demonstration grants to domestic educational institutions or nonprofit organizations for which approved OCC-IPL formats are used without deviation.
 - (b) Conference grants to domestic educational institutions or nonprofit organizations not involving research, development or demonstration work for which approved OCC-IPL formats are used without deviation.

- (c) Small Business Research Innovation (SBIR) Phase I grants for which approved OCC-IPL formats (i.e., General Terms and Conditions for SBIR/STTR Grants) are used without deviation.
- (2) Notwithstanding the above exemptions, if the applicant has provided an affirmative response to the Intellectual Property question on the new Application for Federal Assistance Form (SF 424 (R&R)) or if an application contains technical data exclusions, the contract specialist shall request an OCC-IPL review of the action.

Note: Effective 10/1/05, all Intellectual Property information will be obtained from the new application form SF 424(R&R); thus, the Preaward Information Sheet (AA-47) will no longer be required. However, during the transition period in which the SF 424 (R&R) is not used, the intellectual property information, if required, may be obtained by requesting the AA-47.

- (3) Requests for OCC-IPL pre-award review shall be transmitted on DOE-CH Form 415b.

C. Actions required to be reviewed by the Office of Safety, Technical and Infrastructural Services – Safety and Technical Services (STI-STS):

(1) SAFETY

- (a) All financial assistance actions that may involve work to be performed at a DOE-owned or -controlled site in which the Contracting Officer has determined that the following clause (from the CH Optional Special Terms and Conditions) should not be incorporated into the agreement:
“Environmental, Safety and Health (ES&H) Performance of Work at DOE Facilities

With respect to the performance of any portion of the work under this award which is performed at a DOE-owned or controlled site, the recipient agrees to comply with all state and federal ES&H regulations and with all other ES&H requirements of the operator of such site. The recipient shall apply this provision to its subcontractors of any tier.”

- (b) All Funding Opportunity Announcements for applications that may involve work to be performed at a DOE-owned or –controlled site.
- (c) Requests for STI-STS Safety pre-award review shall be transmitted on DOE-CH Form 415c.

- (2) NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (a) All financial assistance actions, including Funding Opportunity Announcements, except for the following:
- (i) Actions covered by the Categorical Exclusion Determination (executed on 05/31/01) for research activities funded by the Office of Science for SBIR/STTR and 10 CFR Part 605 financial assistance awards;
 - (ii) Conference grants to domestic educational institutions or nonprofit organizations not involving research, development or demonstration work; and
 - (iii) Actions subsequent to an existing NEPA review or clearance provided the proposed actions are within the initial award scope of work for which NEPA review was performed or clearance was granted.
- (b) Requests for STI-STS NEPA review shall be transmitted on Local Staffing/Review Form, Form AA-56, and include the Environmental Evaluation Notification Form, DOE CH Form 560, as completed by the recipient and signed by the Contract Specialist.

(3) REAL PROPERTY

- (a) All financial assistance actions when the action involves: (1) the acquisition (fee, easement, lease or license) of real property to be directly charged to DOE; or (2) disposal of government-owned real property; or (3) involves an improvement to real property on nongovernment-owned land.
- (b) Requests for STI-STS Real Property review shall be transmitted on Local Staffing/Review Form, Form AA-56.

(4) HUMAN SUBJECTS RESEARCH

[Note: Human Subjects Research includes, but is not limited to, (1) the use of humans as test subjects; (2) use of personally identifiable bodily materials even if the materials were collected previously for another purpose; and (3) use of personally identifiable information, such as genetic information or medical and exposure records, even if the information was collected previously for another purpose.]

All financial assistance Funding Opportunity Announcements in which human subjects research is anticipated, or actions for which the applicant has provided an

affirmative response to the Human Subjects Research question(s) on the new Application for Federal Assistance Form (SF 424 (R&R)), the Application Face Page (DOE F 4650.2), the Financial Assistance Preaward Information Sheet (AA-47), or the Human Subjects Research Certification Form (AA-136). [STI-STS review is still required even if the applicant has indicated that an IRB Approval has been granted.]

Notes:

1. Effective 10/1/05, all Human Subjects Research information will be obtained from the new application form SF 424(R&R); thus, the Preaward Information Sheet (AA-47) will no longer be required. However, during the transition period for when the SF 424 (R&R) is not used, the human subjects research information may be obtained from the DOE F 4650.2 or by requesting the AA-47, if applicable.
2. The AA-136 is to be completed in the event the Contracting Officer suspects, based on the Statement of Work, application, or other information, that Human Subjects Research is involved, but the applicant has not so indicated on SF 424 (R&R) or DOE F 4650.2.] (b) Requests for STI-STS Human Subjects pre-award review shall be transmitted on DOE-CH Form 415c.

D. Actions required to be reviewed by the Office of Safety, Technical and Infrastructural Services – Safeguards and Security Services (STI-SSS):

- (1) All financial assistance actions, including Funding Opportunity Announcements, involving: (1) the need for access to or the generation of classified information; (2) special source or special nuclear materials; or (3) Government-owned property, exclusive of land and structures, valued in excess of \$1 million.
- (2) Requests for STI-SSS review shall be transmitted on the Contract Security and Classification Specification, Form DOE F 470.1, after validating the information on the form with the DOE Project Manager.

E. Actions required to be reviewed by ACQ – Support Division (ACQ-SD):

- (1) Assurance of Compliance Equal Employment Opportunity (EEO) Pre-Award Review:
 - (a) All recipients of financial assistance awards will have an Assurance of Compliance EEO pre-award review completed. ACQ-SD will obtain an external Assurance of Compliance EEO pre-award review when the total estimated cost of a single budget period, or the aggregate total of all budget periods within the project period, is \$200,000 or greater. When the total estimated cost of a single budget period or the aggregate total of all budget periods is less than \$200,000, ACQ-SD will perform an internal review based on the Assurance of Compliance self-certification. Assurance of Compliance EEO pre-award reviews will be valid for a one-year period.
 - (b) Requests for Assurance of Compliance EEO pre-award reviews shall be transmitted to ACQ-SD on DOE-CH Form 415d with the applicant's point of contact information for Assurance of Compliance activities or the Assurance of Compliance, Nondiscrimination in Federally Assisted Programs (DOE F 1600.5), and the Procurement Request Authorization (PR) form attached. For actions less than \$200,000, the PR is not required. In cases where the Assurance of Compliance form is being used and processing of a request is required prior to receipt of the recipient's completed Assurance of Compliance form, a note to this effect should be made in the "Comments" section of the DOE-CH Form 415d. ACQ-SD will proceed with obtaining the clearance. However, the EEO pre-award clearance will not be released until ACQ-SD receives the completed Assurance of Compliance form.

Note: Effective 10/1/05, the Assurance of Compliance form (DOE F 1600.5) will no longer be required since all financial assistance applications will be submitted through Grants.Gov using the new Application for Federal Assistance Form, SF 424 (R&R). By signing the SF 424 (R&R), the applicant is certifying to the statements contained in a list of certifications and assurances, which includes the Assurance of Compliance. In lieu of the DOE F 1600.5, the applicants will be required to provide DOE with their point of contact information for Assurance of Compliance activities. However, during the transition period for when the SF 424 (R&R) is not used, the Assurance of Compliance form, if required, should be obtained.

(2) Reporting Requirements Review

ACQ-SD review of reporting requirements is required for the following actions:

- (a) Any financial assistance award which does not utilize the standard reporting requirements for:
 - Office of Science (SC) 10 CFR Part 605 awards.
 - Office of Environmental Health (EH) 10 CFR Part 602 awards.
 - Small Business Innovation Research (SBIR) awards.
 - Small Business Technology Transfer (STTR) awards.
 - Congressionally-mandated or -directed 10 CFR Part 600 awards.
- (b) Requests for ACQ-SD review of reporting requirements shall be transmitted on DOE-CH Form 415a. A copy of the PR and Federal Assistance Reporting Checklist, Form DOE F 4600.2, or other reporting requirements should accompany Pre-Award Review Form, DOE-CH Form 415a.

(3) Independent Review Board and Alternate Review Actions

- (a) Requests for Independent Review shall be transmitted in accordance with CH Directive CH O 971.1B. Contract specialists shall comply with the requirements for HQ and ACQ-SD Independent Review and ACQ-SD Alternate Review set forth in CH Directive CH O 971.1B. Contracting Officers are required to review and sign the Negotiation Memorandum before submission to ACQ-SD for Alternate Review and Independent Review Board action.
- (b) Requests for Alternate Review shall be transmitted on Local Staffing/Review Form, Form AA-56.
- (c) Requests for Independent Review shall be transmitted on Form AA-52.

(4) Headquarters (HQ) Business Clearance Review Actions

- (a) All known or contemplated financial assistance actions, including Funding Opportunity Announcements and new and renewal actions, in which the project period costs exceed \$10M and the action was selected by the Office of Contract Management (OCM) for HQ Business Clearance review.

- (b) Requests for HQ Business Clearance shall be transmitted on the Major Procurement/Assistance Actions Worksheet when OCM requests for a projection of applicable actions prior to the beginning of each fiscal year and during the course of the fiscal year if the applicable action was not previously submitted in the initial annual projected actions.
 - (c) The OCM will review each action on a case-by-case basis to determine if the action should be submitted for HQ Business Clearance review and approval. Accordingly, contracting officers should ensure that adequate lead time exists in the award schedule to permit HQ Business Clearance review and approval to occur.
 - (d) Contract Specialists shall comply with the requirements for HQ Business Clearance review set forth in the Acquisition Guide, Chapter 71.1 (June 2005 – HQ Review of Contract and Financial Assistance Actions, Attachment D - Financial Assistance. Contracting Officers are required to resolve any comments from Independent Review Board before submission to OCM for HQ Business Clearance review.
- F. Contracting Officers should exercise their independent judgment in determining the need for any additional pre-award reviews for actions not specifically covered herein.
- G. OCC-GL shall always be the last office to review the action; however, when Alternate Review is required, review of the action by ACQ-SD shall immediately follow OCC-GL's review.
- H. In cases where staff review comments have been obtained and the guidance provided is not fully complied with, the contract specialist shall document the file providing the rationale for such action.

Patricia J. Schuneman, Director
Support Division
Office of Acquisition and Assistance